IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 387 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHALAL MEGHAJI

Versus

JAYANTILAL DAMJI

Appearance:

1. Second Appeal No. 387 of 1979

MR PV HATHI for Petitioners No. 1-3

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 25/01/2002

ORAL JUDGEMENT

1. The original plaintiffs have filed this Second Appeal under Section 100 of Civil Procedure Code. At the time of admission, the following question was formulated

as the substantial question of law, which is involved in this appeal:

"Whether the defendant (respondent) can be said to be a member of the family of the deceased tenant and his wife (though found to be residing with them for many years)"

2. The suit premises consist of one room, osri and kitchen. The appellants filed the suit for possession of the suit premises, contending that they had let the suit premises to Trikamji Chatrabhuj at a monthly rent of Rs.12/-. Trikamji Chatrabhuj died in 1970 and after his death, his wife, Jaykuben was tenant of the premises. She died in January, 1972, but before her death, she had been residing at Bombay for about three months and she died there. At the time of her death, the suit premises were closed. It was contended that Trikamji Chatrabhuj and his wife, Jaykuben had died and there was no other legal heir and nobody was residing with them in the suit premises and hence the appellants were entitled to get vacant possession of the suit premises. They alleged that the respondent was not the direct legal heir of deceased Trikamji Chatrabhuj or Jaykuben, but he took advantage of the fact that there was no other legal heir and he had entered into illegal possession of the suit premises about 12 days after the death of Jaykuben. It was also alleged that he had never resided with Trikamji or his wife and was a trespasser in the suit premises.

3. The respondent, in his written statement, claimed that he was a nephew of deceased Trikamji and was his legal heir and he had been residing with the deceased for a long time and had been looking after them and was also doing worship of the family deity and had been residing with them at time of their death and, therefore, he was legal tenant of the suit premises. The trial Court, after recording evidence, came to the conclusion that the defendant was not a trespasser, but that he had become the tenant of the suit premises by virtue of Section 5 (11) (c) of the Bombay Rent Act as he was a member of the family of the deceased tenants and had been residing with them in the suit premises at the time of the death of Trikamji and Jaykuben.

4. On appeal, the learned District Judge confirmed the findings recorded by the trial Court and dismissed the appeal.

5. The appellants have, therefore, filed this Second Appeal under Section 100 of the Civil Procedure Code.

6. Now, the learned District Judge has stated in his judgement that the only point the learned Advocate for the appellants urged is that the learned trial Judge had erred in not appreciating the evidence properly and discarded the evidence of witnesses without assigning valid reasons. However, the learned appellate Judge, after appreciating the evidence on record, rejected the contention and confirmed the findings recorded by the trial Court. In the circumstances, findings recorded by the Courts below are findings of fact based on appreciation of the evidence on record. No question of law, much less substantial question of law arises from the judgements of the Courts below. There is no merit in the appeal and the same is, therefore, dismissed. No order as to costs.

25-1-2002 (M.C. Patel, J.)

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